

REMARKS

In the Final Official Action mailed 13 July 2007, the Examiner reviewed claims 146, 148, 174-179, and 189-196. The Examiner has rejected claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 under 35 U.S.C. §102(e) and has rejected claims 176, 177, 190 and 194 under 35 U.S.C. §103(a). In the Advisory Action mailed 11 October 2007, the rejections were maintained.

No claims are amended.

The rejections are respectfully traversed and reconsideration is requested.

Rejection of Claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 under 35 U.S.C. §102(e)

The Examiner has rejected claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 under 35 U.S.C. §102(e) as being anticipated by Berger (US 6,684,063). Applicant requests reconsideration for two reasons.

First, the rejection appears to be based on a reading of the claims that does not take into account that the “interactive process” recited in the claims is one “... using the audio transducer mounted on the headset.” The Berger reference teaches the use of prescriptions and techniques for selecting prescriptions. However, there is no description in Berger of using the audio transducer on the headset in an interactive process to provide the hearing profile. The Office Action does not mention the requirement in the claims that the interactive process use the audio transducer on the headset, and therefore Applicant believes that the rejection should be withdrawn.

The passage cited in the Office Action as corresponding to the “interactive process” in the claims at column 3, lines 20-40, describes technology for storing prescriptions in a device, and allowing a user to select a prescription based on whose prescription it is, or based on which ear the prescription is designed for. There is no interactivity using the audio transducer on a headset involved in the selection process of Berger, as required by these claims.

In the Advisory Action, the Examiner disagrees with this position, stating “...in Column 3, lines 31-33, the reference at least teaches using switches on the headset to switch the hearing profile for the user of the phone. The user making changes to the hearing profile using the headset reads on an interactive process as claimed by the invention.” Applicant agrees that the

reference teaches such switches on the handset. The reference does not teach or suggest such switches on the headset, as the comment in the Advisory Action asserts.

More fundamentally, this comment disregards the limitation in claim 146, which requires “a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user interface supporting an interactive process using the audio transducer mounted on the headset to provide the hearing profile.” The reference does not suggest a program in memory on the headset for “communicating with an external data processing device providing a user interface.”

Claim 174 includes the limitations “... coupling the headset via a communication channel to an external data processor having a user interface; executing an interactive process using the user interface and the audio transducer on the headset to develop a hearing profile; ...” The reference does not suggest these steps.

Second, the rejection argues that the approach of mixing features (switches on the handset, processor on the headset) of two devices described in Berger is proper in this case, because “... there is no indication or negative teaching that either of the alternative embodiments cannot be used together...” As mentioned above, even this approach does not suggest the claims herein. Nonetheless, Applicant requests reconsideration of this point as well, although it is not necessary for a finding of patentability. Specifically, the embodiment in Berger at column 6, lines 23-34, and Figure 6, is a headset including a processor. However, there is no mention how the user would interact with the unit to select the prescription, other than to mention an “optional smart card bay 620”. Berger, column 6, line 33-34. This suggests that a prescription must be programmed into the headset, but it does not teach that the processor on the headset be adapted to communicate with a remote device providing a user interface for an interactive process. Rather, this suggests that the selection of the prescription should be done using something other than the headset processor. And, with greater force, this suggests that the audio transducer on the headset is not involved in an interactive process to provide the hearing profile.

Accordingly, because Berger does not teach an “interactive process using the audio transducer on the headset” as required in the present claims, and does not teach a headset that includes a computer program stored in a data storage medium on the headset, that supports an interactive process as claimed. Applicant submits that Berger does not anticipate the present claims.

Accordingly, reconsideration of the rejection of claims 146, 148, 174-175, 178-179, 189, 191-193 and 195-196 is respectfully requested.

Rejection of Claims 176, 177, 190 and 194 under 35 U.S.C. §103(a)

The Examiner has rejected claims 176, 177, 190 and 194 under 35 U.S.C. §103(a) as being unpatentable over Berger in view of Campbell (US 6,212,496).

Applicant submits that such claims are patentable for the reasons set forth in the response filed 6 June 2007.

Accordingly, reconsideration of the rejection of claims 176, 177, 190 and 194 is respectfully requested.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1001-3).

Respectfully submitted,

Dated: 05 November 2007

/Mark A. Haynes/

Mark A. Haynes, Reg. No. 30,846

HAYNES BEFFEL & WOLFELD LLP
P.O. Box 366
Half Moon Bay, CA 94019
(650) 712-0340 phone
(650) 712-0263 fax